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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JASBIR SANGHA,

Plaintiff,

vs.

MEHUL PATEL aka MIKE PATEL;
CHIRAG PATEL aka CHUCK PATEL;
JAGMOHAN DHILLON; DHILLON
MANAGEMENT INC., a California
corporation; DHILLON, INC., a Texas
corporation; DHILLON GROUP, LLC,
a Texas limited liability company;
HARMINDER DHILLON;
GURENDER S. SAHANI;
TARLOCHAN S. KATARIA; NEW
HOPE HOSPITALITY, LLC,
STARLITE HOTELS, LLC, a Texas
limited partnership; NEWCREST
HOTELS, LTD., a Texas limited
partnership; CORSICANA LODGING,
LLC, a Texas limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 2:11-cv-06970-RGK-VBKx

**DEFENDANT JAGMOHAN
DHILLON'S NOTICE OF MOTION
AND MOTION TO DISMISS FIRST
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF;**

[Fed. R. Civ. P. 12(b)(6) and 9(b)]

Hearing

Date: November 7, 2011
Time: 9:00 a.m.
Courtroom: 850

Action Filed: April 18, 2011
Removal Date: August 24, 2011
Trial Date: None set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Please take notice that on November 7, 2011 at 9:00 a.m. in Courtroom 850 of
3 the above-captioned court located at 255 East Temple Street, Los Angeles, CA
4 90012, Defendant Jagmohan Dhillon ("Dhillon"), will and hereby does move
5 pursuant to Federal Rule of Civil Procedure 12(b)(6) and 9(b) to dismiss the first,
6 second, third, fourth, and fifth causes of action contained in the First Amended
7 Complaint filed by Plaintiff Jasbir Sangha ("Plaintiffs").

8 Good cause exists to grant this motion because the First Amended Complaint
9 fails to allege sufficient facts to state a cause of action, and fails to allege fraud with
10 particularity.

11 This motion is based on this Notice of Motion and Motion, the attached
12 Memorandum of Points and Authorities, the First Amended Complaint, and such
13 further evidence and arguments as may be presented at or before the hearing on this
14 matter.

15 This motion is made following the conference of counsel pursuant to Central
16 District Local Rule 7-3, which took place on September 28, 2011.

17
18 DATED: October 3, 2011

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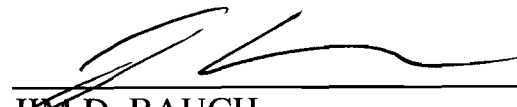
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22 JM D. BAUCH
23 Attorneys for Defendants Jagmohan
24 Dhillon, Gurender S. Sahani, and Tarlochan
25 S. Kataria
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction/Factual Summary

Dhillon brings this motion to dismiss Plaintiff's specified causes of action for the following reasons:¹

Plaintiff's first three claims seek rescission of a mutual general release that Plaintiff alleges was fraudulently induced. Plaintiff's claims, However, fail to adequately allege fraud. Plaintiff alleges misrepresentations by a different defendant, Mehul Patel, in a telephone call and at a meeting in California. But Dhillon is not alleged to have been present at that meeting or to otherwise have made any representations in connection with the release. Moreover, even if the alleged representations of Mehul Patel could be attributed to Dhillon, they are still insufficient as they amount to nothing more than a prediction about the equity of unspecified pieces of property, which are mere opinions and not actionable fraud.

Plaintiff's remaining claims relate to the underlying real estate transactions. But Plaintiff admits that he released these claims, and so they must fall with his rescission claims.

II. Legal Standard For Motion to Dismiss

A complaint must provide "more than labels and conclusions"; it must make "factual allegations" that "raise a right to relief above the speculative level" to the "plausible" level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 n.3, 127 S.Ct. 1955, 1965 n.3 (2007).

¹ Dhillon previously moved to dismiss the original Complaint, which was set for hearing on October 3, 2011. Plaintiff filed his First Amended Complaint on September 16, 2011. The Court has taken the original motion to dismiss under submission.

Furthermore, where a complaint alleges fraud, it must “state with particularity the circumstances constituting fraud. . . .” Fed. R. Civ. P. 9(b). Fraud must be pled “with a high degree of meticulousness.” *Desaigoudar v. Meyercord*, 223 F.3d 1020, 1022-23 (9th Cir. 2000).

In diversity cases, a federal court applies state law as to the substantive elements of fraud, but those elements must be pleaded with the specificity required by federal law. *See Moore v. Brewster*, 96 F.3d 1240, 1245-46 (9th Cir. 1996).

III. Plaintiff’s First and Third Causes of Action Fail to State a Claim Against Dhillon Because Plaintiff Has Not Alleged Any Fraud By Dhillon

The First Amended Complaint’s (“FAC”) First Cause of Action for false promise and Third Cause of Action for rescission based on fraud seek to rescind a release of liability that Plaintiff claims he was fraudulently induced to give the Defendants. However, Plaintiff fails to allege fraud adequately against any defendant, and in particular fails to allege any fraudulent representations made by Dhillon.

Under California law, the elements of an action for fraud are: (1) misrepresentation; (2) scienter (knowledge of falsity); (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. *See Small v. Fritz Companies, Inc.*, 30 Cal.4th 167, 174 (2003).

Furthermore, under both California law and Federal Rule of Civil Procedure 9(b), Plaintiff must specifically state the time, place or manner of the purported fraudulent acts each defendant committed. *See Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997) (“the who, what, when, and where must be laid out before access to the discovery process is granted.”); *Lazar v. Superior Court*, 12 Cal.4th 631, 645 (1996) (plaintiff must plead facts that “show how, when, where, to whom, and by what means the representations were tendered”); *Goldrich v. Natural Y Surgical Specialties*, 25 Cal.App.4th 772, 783 (1994) (where plaintiff merely

1 alleged that defendants “falsely and fraudulently” represented that their products
 2 were safe, court found pleading failed to meet the required specificity for fraud since
 3 it could not be determined what was said or by whom or in what manner).

4 Plaintiff has failed to do so. The FAC’s allegations are insufficient for two
 5 independent reasons.

6 A. The Allegations Are Not Made With Particularity As To Any
 7 Defendant

8 The supposedly false representations by M. Patel and C. Patel are not pled
 9 with particularity. Plaintiff alleges repeatedly that Mehul Patel “promised that
 10 Sangha would receive a promissory note made by Dhillon, Sahani and Kataria in the
 11 amount of \$173,000 for the balance of Sangha’s investment in the Corsicana
 12 properties, which would be secured by second trust deeds on Dhillon’s properties in
 13 Sherman and Sweetwater that had sufficient equity to cover the October 2, 2009
 14 Promissory Note. That representation was false.” FAC, ¶ 61.

15 But Plaintiff admits that he did receive a promissory note, *see* FAC ¶ 64, so
 16 the only basis for his allegation that Mehul Patel’s representations were false is
 17 Plaintiff’s claim that the note was “worthless,” which rests on Plaintiff’s allegation
 18 that he “is informed and believes that Mehul Patel knew” that two deeds of trust had
 19 been recorded in September 2009. FAC, ¶ 61.

20 This is insufficient to support a claim for fraud. As the events of recent years
 21 have amply demonstrated, property values can change quickly, and properties that
 22 have owner equity today can be “underwater” tomorrow. Any representations as to
 23 the equity of the properties or their ability to secure the note are not actionable. *See*
 24 *Nibbi Brothers, Inc. v. Home Fed. Sav. & Loan Ass’n*, 205 Cal.App.3d 1415, 1423
 25 (1988) (“[P]redictions as to future events, or statements as to future action by some
 26 third party, are deemed opinions, and not actionable fraud.”) (internal quotation
 27 marks omitted); *Neu-Visions Sports, Inc. v. Soren/McAdam/Bartells*, 86 Cal.App.4th
 28 303, 308 (2000) (“Representations of value are opinions.”)(citation omitted).

1 B. *The Allegations Are Not Made With Particularity As To Dhillon*

2 Even assuming that the allegations regarding the supposedly fraudulently
3 induced release were sufficient against Mehul Patel – which they are not, as shown
4 above – they fail to establish any fraudulent conduct by Dhillon.

5 Nowhere does Plaintiff allege that *Dhillon* made any false representations to
6 Plaintiff to obtain the release. The FAC tries to blur together all the defendants
7 under the generic title “Defendants,” but this is insufficient. *See Sanford v.*
8 *MemberWorks, Inc.*, 625 F.3d 550, 558 (9th Cir. 2010) (“[t]o avoid dismissal for
9 inadequacy under Rule 9(b), [the] complaint would need to state the time, place and
10 specific content of the false representations *as well as the identities of the parties to*
11 *the misrepresentation.*”) (alterations in original; internal quotation marks omitted
12 and emphasis added).

13 More importantly, it is clear that Dhillon is not alleged to have made any of
14 the supposedly fraudulent inducements to the release. The FAC repeatedly
15 identifies Mehul Patel as the person to whom Plaintiff spoke regarding the release
16 and promissory note. *See* FAC ¶¶ 59 (“Mehul Patel called Sangha. . . .”); 63
17 (“Mehul Patel came to Los Angeles to meet again with Sangha. . . . Mehul Patel
18 affirmed his promises and representations. . . .”).

19 Plaintiff attempts to implicate Dhillon by alleging that Mehul Patel was acting
20 on Dhillon’s behalf, but the only support offered for that allegation is that Mehul
21 Patel allegedly said so. There is no allegation that Dhillon ever made any
22 representations to Plaintiff regarding the release and promissory note or the equity in
23 the properties, or that he even knew about, much less authorized or ratified, any such
24 representations by Mehul Patel.

25 Accordingly, the First and Third Causes of Action must be dismissed.
26
27
28

1 IV. The Second Cause of Action Fails

2 The Second Cause of Action also seeks to rescind the release agreement, on
3 the purported grounds of “failure of consideration.” However, that cause of action is
4 based on Plaintiff’s assertion that “[t]he October 2, 2009 Promissory Note secured
5 by the Sherman and Sweetwater properties was a material part of the consideration
6 for the Release.” FAC, ¶ 74.

7 Plaintiff’s failure of consideration theory is without merit. Even though
8 Plaintiff alleges that there was a written release agreement, *see* FAC ¶ 64, he does
9 not identify any provisions in the Mutual Release that condition its enforceability on
10 the Note or the equity in the properties. Indeed, he does not allege that the Mutual
11 Release was breached at all.

12
13 V. Plaintiff’s Fourth, Fifth, and Sixth Causes of Action Fail

14 Plaintiff’s fourth, fifth, and sixth causes of action, for fraud , breach of
15 fiduciary duty, and fraudulent concealment, concern the supposed “underlying
16 fraud” that was the subject of the release. These claims fail.

17 Plaintiff admits that he gave the defendants a release of liability on these
18 claims. *See* FAC, ¶ 65. Accordingly, Plaintiff’s Fourth, Fifth, and Sixth Causes of
19 Action are dependent on his first three causes of action for rescission. Without a
20 rescission of the release, the fourth through sixth causes of action are barred.
21 Because, as shown in the preceding sections, the rescission claims fail, so too must
22 these claims.

23
24 VI. Plaintiff’s Business and Professions Code § 17200 Claim Fails

25 The Seventh Cause of Action for Unfair Business Practice under California
26 Business and Professions Code § 17200 is expressly linked to the previous claims
27 for fraud and provides no further allegations. *See* FAC, ¶¶ 104-106. Accordingly, it
28 fails for the same reasons as the prior claims.

1 VII. Conclusion

2 Based on the aforementioned arguments, as well as arguments raised during
3 the hearing on this motion, Dhillon respectfully requests that the Court grant this
4 motion and dismiss Plaintiff's first, second, third, fourth, fifth, sixth, and seventh
5 causes of action against Dhillon.

6
7 DATED: October 3, 2011

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